DOCKET # HHB-CV17-6050213-S	:	SUPERIOR COURT
POLICE DEPARTMENT, TOWN OF STRATFORD, CONNECTICUT	:	J.D. OF NEW BRITAIN
V.	:	AT NEW BRITAIN
BOARD OF FIREARMS PERMIT EXAMINERS, RICHARD SOLTIS	:	JUNE 26, 2020

DEFENDANT'S BRIEF IN OPPOSITION

I. INTRODUCTION

Plaintiff Police Department, Town of Stratford, (the "Town") has appealed the decision of the Board of Firearms Permit Examiners (the "Board") following an administrative hearing held on September 21, 2017 wherein it overturned the Town's decision to deny defendant Richard Soltis ("Soltis") a permit to carry. The Town claims that the Board erred in finding Soltis, who possessed a medical marijuana card, to be a suitable person to carry a weapon, especially in light of the fact that it is a federal offense to use a controlled substance under Schedule I under the Controlled Substances Act.

II. FACTS

In advance of the administrative hearing before the Board, the Town completed an Issuing Authority Questionnaire. In response to question 8, which asked the Town to

state the reason for its denial, the Town responded that it denied the permit because Soltis "went to renew pistol permit in 1995 at which time it was revoked. As of 6-21-1999 applicant's pistol permit status shows revoked. He believes it is due to an assault 3rd charge in 1978. During application process the applicant stated he is being treated for anxiety and depression." Return of Record ("ROR"), Exhibit 3, p. 3. Also in advance of the hearing, the Town submitted a copy of its background investigation in which it is indicated that Soltis produced a marijuana card for purposes of identification. Id., pp. 5 – 6. Lastly, during the investigation, the Town made reference to a 2016 incident in which Soltis was found to be the aggressor and escorted from the event, but no charges were ever pressed against him. Id., p. 7.

Likewise, in advance of the hearing, Soltis was asked to respond to an Appellant Questionnaire. ROR, Exhibit 2, pp. 3 – 4. In it, he acknowledged having held a permit between 1979 and 1995. Id., p. 3. Soltis, via his attorney, also attached a copy of the SBPI for a 1978 arrest, and a copy of his driving history, which was clean. Id., pp. 5 - 7.

An administrative hearing was held on September 21, 2017 with 6 out of 7 Board members in attendance. ROR, Exhibit 4, p. 2. In addition to the questionnaires, the Board received a letter from Yale New Haven Health Northeast Medical Group, which

was submitted by Soltis, absent objection. Id., p. 4. Witness testimony regarding suitability was heard from Sam, on behalf of Soltis. Id., p. 2.

Detective Panton, the same person who conducted the background investigation of Soltis, represented the Town at the hearing. ROR, Exhibit 5, Transcript, p. 2, lines 28 - 29. Panton testified as to his interaction with Soltis during his background investigation. Id., p. 3, lines 2 – 35. He then testified the Chief had concern regarding use of medical marijuana in combination with other medications. Id., lines 29 – 41. On cross, Panton affirmed that this was the only reason for the Town's denial. Id., p. 4, lines 1 – 10.

On direct, Soltis testified that he is retired due to a disability. Id., p. 8, lines 12 – 20. Prior to that, he worked as an electrical technician in a power plant. Id., lines 20 – 22. Soltis testified that he had held a permit but, in his effort to renew it in 1995, was informed that it had been "red-flagged"/revoked because of the 1978 conviction. Id., lines 24 – 42. Soltis testified he is now motivated to get a permit because his friends, who hunt with rifles, want him to join them. Id., p. 9, lines 1 – 8. Even though he does not have a rifle, Soltis likes to use crossbow and bow to hunt and goes to shoot the 22 his father had given him when he was 13 at the Bridgeport Shooting Range. Id., lines 1 - 26. When questioned about the arrest over 40 years ago, Soltis described a scenario

involving a keg party and young guys getting worked up over spilled beer. Id., p. 10, lines 34 – 42. As to the 2016 incident, Soltis described his interaction with his karate instructor who was working at the "Blues on the Beach" event. Id., p. 16, Lines 33 – 46. Soltis stated that this person was responsible for carding individuals in the liquor area but had earlier giving Soltis a parking pass. Id. When Soltis saw him later, Soltis said he had given the parking pass to someone else and then the instructor went crazy on him. Id. Then, for reasons unknown, Soltis was asked to leave the event or go to the police station. Id., p. 17, lines 5 – 20. So he left. Id.

Then the issue of the medical marijuana card was addressed. Counsel indicated that "[t]he [State Police are] aware of people with permits who have medical marijuana cards. They don't revoke permits on – based – simply on the basis of the card." Id., p. 6. Lines 30 – 33. Soltis described how he came to use marijuana for medical reasons. Id., p. 9, lines 35 – 39. Soltis declared that the marijuana has helped cure his medical condition. Id., p. 9, lines 35 – 39. Soltis described the process he went through to obtain the card. Id., p. 12, lines 2 – 8, p. 13, lines 12 - 13. Soltis then described how he uses it and when he uses it. Id., lines 14 – 46. Soltis testified the current card would expire in two months. Id., p. 12, lines 6 – 12. Soltis then explained that he sought treatment at

Yale New Haven in 1995 for anxiety, which has been medically treated. Id., pgs. 14 – 16, lines 1 – 25.

The Board heard testimony from Sam, a friend who has known Soltis for over 35 years. Id., p. 19, lines 33 – 45, p. 20, lines 1 – 3. Sam acknowledged that he has taken Soltis and his firearm to Bridgeport Shooting Range and buys ammunition for him there. Id., lines 16 – 19. In Sam's opinion, Soltis is a stable individual who is not a danger to other people if granted a permit to carry. Id., lines 21 – 36.

In closing, Panton once again expressed concern of the use of marijuana in combination with other medications and that his past criminal history played no role in the Town's denial of the temporary pistol application. Id., p. 24, lines 22 – 36. Counsel for plaintiff also agreed his past criminal history should have no bearing in determining his suitability. Id., p. 23, lines 38 – 46, p. 24, lines 1 – 17. In fact, Soltis's attorney praised Soltis for seeking treatment for medical issues and because of the Town's denial of his application, the Town has "motivated people not to tell the police and not to seek treatment . . . [and] If he hadn't told the officer . . . nobody would know the difference." Id.

The Board deliberated on the record. Board Member Rosensweig stated:

> "…I don't believe we can issue this permit. Marijuana is illegal under federal law. Federal law prohibits the use of illegal drugs.

> DEA's interpretation is that medical marijuana use is a violation of federal law, and there's a nine Circuit Court of Appeals case saying that the possession of the card alone would be a federal disqualifier . . . I think by issuing this card – this permit, we would be turning him into an instant federal felon should he actually have a handgun. . . . "

Id., p. 25, lines 19 – 27.

Another Board member echoed similar sentiment. Id., lines 41 – 42; see also p. 26, lines 22 – 24, see also p. 27, lines 1 – 5. After much deliberation and consideration given to tabling the matter for further research, the Board brought the appeal to a vote, concluding 4 to 2, that the Town's denial of the permit should be overturned. Id., p. 32, lines 40 – 46, p. 33, lines 1 – 15. Then the Board warned Soltis not to "get jammed up because now you're on notice" and stated it would seek advice from the State Police and the Attorney General's office on this issue. Id., p. 33, lines 19 – 20, see generally p. 33 – 35.

III. PROCEDURAL BACKGROUND

The Town filed an appeal of the Board's September 2017 decision on or about November 14, 2017. After some time, the Town filed motion for remand to submit additional evidence to support its denial, which was unopposed. The motion was granted on March 4, 2019 and the Board conducted a further hearing on May 16, 2019. Attachment 1, Transcript, May 16, 2019. At the hearing, a representative for the town

argued that the federal law prohibits the issuance of a temporary permit to carry while Soltis maintains possession of a medical marijuana card. Id. The Board was unpersuaded again, and returned a finding that Soltis is suitable for a temporary pistol permit to issue in his favor. Id.

On or about July 10, 2019, the Town filed a Motion to Stay Pending Outcome of Appeal. On August 13, 2019, the Court granted said motion, absent objection.

On March 9, 2020, the Town filed its Brief in support of its denial of the pistol permit application in which it continued to assert it was aggrieved by the Board's administrative final decision of May 16, 2019, findings of fact, inferences and conclusions were erroneous. Specifically, the Town argues that "individuals that use marijuana, regardless of whether the state he or she resides has passed legislation authorizing marijuana for medicinal purposes, is an unlawful use of a controlled substance is therefore prohibited by federal law from possessing firearms or ammunition." Further, the Town argues that Solti's "conduct and poor judgment, evidenced by his conviction for assault in the 3rd degree, has shown him to be lacking the essential character or temperament necessary to be entrusted with a weapon."

The Board submits this brief in opposition.

IV. STANDARD OF REVIEW

The Board is an administrative agency; see General Statutes § 1–205; and is, thus, governed by the Uniform Administrative Procedure Act, General Statutes 4–166 et seq. General Statutes § 4–183(j), which describes the Superior Court's standard of review of an agency's decision, provides in pertinent part: “The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the per son appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion....” The ultimate determination is whether, “in view of all of the evidence ... the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” *Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission*, 47 Conn. 466, 469–70, 704 A.2d 827 (1998).

"Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts." *New Haven v. Freedom of Information Commission*, 205 Conn. 767, 774, 535 A.2d 1297 (1988). Ordinarily, great deference is given to the construction given a statute by the agency charged with its enforcement. *Connecticut Assn. of Not–for–Profit Providers for the Aging v. Dept. of Social Services*, 244 Conn. 378, 389, 709 A.2d 1116 (1998). "[A]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts.... Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion.....Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny ... the agency is not entitled to a special deference.... [I]t is for the courts, and not administrative agencies, to expound and apply governing principles of law." (Citations omitted, internal quotations marks omitted.) *Connecticut Light & Power Co. v. Texas–Ohio Power, Inc.*, 243 Conn. 635, 642–43, 708 A.2d 202 (1998).

V. LEGAL ARGUMENT

Section 29–32b establishes a board of firearms permit examiners within the department of public safety whose function is to hear such appeals. Subsection (b) of § 29–32b provides in relevant part that, in hearing an appeal, "the board shall inquire into and determine the facts, de novo, and unless it finds that such a ... revocation ... would be for just and proper cause, it shall order such permit or certificate to be ... restored...."

To supply the meaning of "just and proper cause" for revocation, our state courts have looked to the grounds for revocation set forth in General Statutes § 29–32(b), which provides in relevant part that a firearms permit "shall be revoked by [the] commissioner upon conviction of the holder of such permit of a felony or of any misdemeanor specified in subsection (b) of section 29–28[3] or upon the occurrence of any event which would have disqualified the holder from being issued the state permit or temporary state permit pursuant to subsection (b) of section 29–28 ...." See, e.g., *Williams v. Board of Firearms Permit Examiners,* Superior Court, judicial district of New Haven, Docket No. CV–94–0358071, 1995 WL 404993 (June 28, 1995). General Statutes § 29–28(b), in turn, specifies ten grounds for mandatory disqualification.

It also, more generally, provides the issuing authority with discretion to deny a firearms permit if it finds that the applicant intends to make an unlawful use of a

permitted firearm or is unsuitable to hold such a permit. See General Statutes § 29–28(b).

In the present case, the Board concluded that Soltis was not subject to mandatory disqualification under § 29–28(b). ROR, Exhibit 5, p. 5, lines 1 – 26. Having found he was not subject to mandatory disqualification, the Board applied the discretionary standard and considered Soltis's suitability.

Although not statutorily defined, "[t]he words 'suitable person' have a definite meaning in our law, and their use in the act furnishes a standard by which the [agency] must be guided." *State v. Vachon,* 140 Conn. 478, 485, 101 A.2d 509 (1953). "A person is suitable who, by reason of his character—his reputation in the community, his previous conduct as a licensee—is shown to be suited or adapted to the orderly conduct of a business which the law regards as so dangerous to public welfare that its transaction by any other than a carefully selected person duly licensed is made a criminal offense. It is patent that the adaptability of any person to such a business depends upon facts and circumstances that may be indicated but cannot be fully defined by law, whose probative force will differ in different cases, and must in each case depend largely upon the sound judgment of the selecting tribunal." *Smith's Appeal from County Commissioners,* 65 Conn. 135, 138, 31 A. 529 (1894) (affirming grant of

liquor license). Specifically in the context of a firearms permit, “General Statutes §§ 29–28 through 29–38 clearly indicate a legislative intent to protect the safety of the general public from individuals whose conduct has shown them to be lacking the essential character or temperament necessary to be entrusted with a weapon.” (Internal quotation marks omitted.) *Dwyer v. Farrell,* 193 Conn. 7, 12, 475 A.2d 257 (1984).

As to the 1978 arrest, the Board placed no weight on it for determining suitability. In fact, one Board Member stated he didn’t “give any – really much consideration to the 1970’s arrest. What happened back then, you’re a different person now. ROR, Exhibit 5, p. 25, lines 16 – 17. Several Board Members concluded the same. Id., p. 25, lines 39 – 40; p. 26, line 7; p. 26, lines 36 – 37, 45 – 46; p. 28, lines 13 – 14; lines 23 - 27. The same conclusion can be inferred by the Board that the 2016 incident did not impact their determination of Soltis’s suitability. Clearly neither arrest had any impact on the Board’s determination of suitability.

Neither did the daily use of medical marijuana or medication have any impact on the Board’s determination of suitability. The only time usage of marijuana arose was in context of the weight to be given to the Yale New Haven letter. Id., p. 26, lines 30 – 39. The Board Member acknowledged that Soltis is able to represent himself well and

makes a credible impression . . . it seems to me that his treatment is more or less stable and working." Id.

Having determined Soltis to be suitable and concluding that he was not subject to mandatory disqualification, the Board turned to a lengthy discussion on whether a temporary pistol permit could issue in his favor even though federal law would prevent Soltis from possessing a firearm or ammunition due to marijuana use. In the end, one Board Member commented that

> "the issue is with the – is a holder of a medical marijuana card federally prohibited from possessing a firearm by virtue of having a medical marijuana card. And the second question is even if he is federally prohibited from possessing a firearm, are we precluded from issuing a permit. He can have a permit without having a firearm. I mean, that – my – and my sense is that our job is whether or not to issue a permit, to determine the suitability or disqualification of a particular appellant. I agree with everything that's been said here regarding the appellant. I think he is a poster child for good deeds . . . "

Id., p. 29, lines 11 – 26.

Shortly after this comment was made, the Board took a vote. Id., p. 32, lines 40 – 41. Two voted in favor of upholding the denial, four voted in favor of Soltis. ROR, Exhibit 4, p. 2. Afterwards, the Board cautioned Soltis as to his possession of medical marijuana card and receipt of a temporary pistol permit: "I would just really caution [Soltis] – not to get jammed up because you're on notice. You – there's no excuse to

say I didn't know there could be a problem here. It's – you're really putting yourself out there." ROR, Exhibit 5, p. 33, lines 19 – 22. Before concluding the hearing, the parties were reminded that the State Police retains the right to revoke Soltis temporary pistol permit to be issued by the Town. Id., p. 35, lines 4 – 7.

In its brief, the Town argues that Soltis should not be issued a temporary permit to carry because he is a user of marijuana. The Town cites to 18 U.S.C. Section 812(b)(1)(B) and (1)(C), the ATF, and the Controlled Substances Act for the proposition that under federal law, individuals that use marijuana, regardless of whether the state he or she resides has passed legislation authorizing marijuana for medicinal purposes, is an unlawful use of a controlled substance and is therefore prohibited by federal law from possessing firearms or ammunition. It also cites a Ninth Circuit Court of Appeals and a Fourth Circuit of Virginia, neither of which are binding on Connecticut. The Town also argued that a recent United States District Court for the District of Connecticut is applicable to the facts because "individuals who have medical marijuana cards and/or use marijuana cannot own firearms."

The Town then argues that there no evidence on the record, or testimony adduced at the hearing, or its own judgment that "Soltis is suitable to hold a pistol permit because the handful of facts presented tit not support the inference that Soltis

possesses the requisite judgment, character, or temperament necessary to be entrusted with a legal weapon. Then, despite the fact the Town conceded the past criminal history of Soltis to amount to nothing, the Town turns around and argues that "an individual with a violent criminal record should not have access to a firearm, especially significant automatic weapons." The Town then lists off 5 registered weapons that Soltis possesses: a Bellmore-Johnson Tool 9mm, Intratec 9mm (semi-automatic pistol), an AKM assault rife (manufacture unknown), Colt AR-15 (semi-automatic rifle), and a Mossberg 500 (pump action shotgun). Though this information was gathered during the discovery investigation conducted, Paton never questioned Soltis about how he came about owning these guns nor when he came into possession of them. The only gun Soltis mentioned owning during the hearing was one that his father gave him when he was 13 years of age, a fact which is never mentioned thereby suggesting that the Town's argument rests in future possession of guns and ammunition while possessing a medical marijuana card. The Board seems to have interpreted the application of the federal law the same way when it said "[h]e can have a permit without having a firearm." ROR, Exhibit 5, p. 29, lines 21 – 22.

In fact, the Board's conclusion that Soltis is suitable for a temporary permit to carry is consistent with Connecticut General Statutes Sec. 21a-408a**,** which provides, in relevant part that:

> "A qualifying patient who has a valid registration certificate from the Department of Consumer Protection pursuant to subsection (a) of section 21a-408d and complies with the requirements of sections 21a-408 to 21a-408n, inclusive, shall not be subject to arrest or prosecution, penalized in any manner, including, but not limited to, being subject to any civil penalty, or denied any right or privilege. "

Under the statute, the Board could not deny Soltis any right or privilege simply because he is a user of marijuana for medical purposes. The statute in fact states Soltis should not be subject to penalization in any manner for possessing a medical marijuana card. Yet the Town has taken great strides to penalize this individual because of his admitted use of marijuana. Had Soltis not voluntarily disclosed this information to the Town, no one would have learned that he possesses a marijuana card. His honesty has placed him in this situation. It was his honesty, his character, his temperament that allowed the Board to find Soltis to be suitable to possess a temporary pistol permit.

The co-existence of State of Connecticut's gun laws and medical marijuana laws have yet to be determined and until a final determination is made, the Board will continue to decide whether an individual, who has been denied a permit to carry, is subject to mandatory disqualification or is suitable for a pistol permit to issue in their

favor. This is exactly what the Board did in September 2017 and May 2019. Based on the record, the decision of the Board 1) was not in violation of constitutional or statutory provisions; 2) was not in excess of statutory authority of the agency, 3) was not made upon unlawful procedure; 4) is not affected by other of law; 5) is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; nor 6) was it arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

VI. CONCLUSION

Based on the record, there is sufficient evidence to support the Board's decision that Soltis is suitable for a temporary pistol permit to issue in his favor. As such, the Defendant respectfully requests that the court, on the instant brief, decide in favor of the Board and deny the Town's appeal.

Respectfully submitted by
DEFENDANT
Board of Firearms Permit Examiners

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CERTIFICATION

I hereby certify that a copy of the Answer by Board of Firearms and Permit Examiners was filed electronically with this court on June 26, 2020 and copies of the same were e-mailed and mailed first class postage prepaid to the parties of record, as follows:

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